



**Burin v Republic (Miscellaneous Criminal Application E010 of 2025)  
[2025] KEHC 17151 (KLR) (19 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17151 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS CRIMINAL APPLICATION E010 OF 2025**

**RL KORIR, J  
NOVEMBER 19, 2025**

**BETWEEN**

**MARTIN KIRIMI BURIN ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Martin Kirimi Burin (Applicant) was charged with the offence of defilement contrary to Section 8(1) as read with section 8(3) of the *Sexual Offences Act* in Chuka Chief Magistrate's Court Criminal Case No. 12 of 2017. He was tried, convicted and sentenced to serve 20 years' imprisonment effective 4<sup>th</sup> November, 2019.
2. The Applicant appealed to the High Court in Criminal Appeal No. E015 of 2022. His Petition of Appeal dated 21<sup>st</sup> February 2022 had one main ground being that the sentence meted out to him was harsh and excessive and failed to take into account his mitigation.
3. The Prosecution responded to the appeal by filing and serving upon the Applicant (then Appellant) notice of enhancement of sentence dated 10<sup>th</sup> January 2023.
4. When the appeal came up for hearing on 27<sup>th</sup> January, 2023, the Applicant elected to withdraw his appeal and the court marked it duly withdrawn.
5. The Applicant subsequently filed the present Application for revision of sentence. His Application is grounded on the fact that the trial court did not consider the period he had spent in pre-trial custody as required by section 333(2) of the Criminal Procedure Code. He seeks that this court declares that his 20-year sentence commence from his date of arrest and pre-trial custody.
6. The Respondent filed submissions opposing the Application. They submitted that the Applicant had exhausted the Appellate process and that the present Application was a back door attempt to get a



lenient sentence. They submitted that failure by the trial court to indicate specifically that it had taken into account the pre-trial custody did not invalidate the sentence. They relied on the case of DS -vs Republic [2022] KEHC 2502 (KLR) where the court held that Section 333(2) required a trial court to give real time effect in sentencing.

7. In oral submissions, the Applicant stated that he only wished to have his sentence reduced so that he would sooner go and take care of his children and his mother who also depended on him.
8. This court's revisionary jurisdiction is donated by section 362 of the Criminal Procedure Code, which provides:-

“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

9. In exercising powers of revision, then high court has the same powers as those in an appeal and may alter or enhance sentence under Section 364 (1) (b) of the Criminal Procedure Code.
10. I called for and examined the trial file as mandated by section 362 as quoted above.
11. The record shows that the Applicant was charged with two counts. The first was defilement contrary to section 8(2) of the *Sexual Offences Act* and the second count was incest contrary to Section 11 *Sexual Offences Act*. The victim of this offence was a 7 year old child named S.N. He was convicted on the charge of defilement.
12. The proceedings further show that the Applicant's mitigation was that he had children and prayed for non-custodial sentence.
13. In sentencing the Applicant the court stated:-

“The Law provides for life imprisonment for a defilement for a 7 years old girl. I have considered the mitigation and the case of Mwathetu & Wanjala v. Republic. I do hereby grant a 20 (twenty) years' imprisonment sentence to the accused. Right of Appeal 14 days.”

14. Clearly the sentence imposed by the trial court was not only lenient but unlawful. Section (8)(2) of the *Sexual Offences Act* provides:-

“A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life”

15. The Applicant, having benefited from such a reduced sentence cannot now claim that the court did not consider his pre-trial custody. Had the Prosecution or this court given the Applicant notice of enhancement of sentence, this court would have, without hesitation been minded to substitute the 20-year imprisonment with life imprisonment as provided by law.
16. The Application has no merit and is dismissed. The Applicant shall continue to serve his 20- year imprisonment.

Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 19<sup>TH</sup> DAY OF NOVEMBER, 2025.**



.....

**R. LAGAT-KORIR**

**JUDGE**

Ruling delivered in the presence of the Applicant acting in person and Ms Rukunga for the State; Muriuki (Court Assistant).

